



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026



PBGC 2019-001753

September 9, 2019

Mr. Austin Evers
American Oversight
1030 15th Street, NW, Suite B255
Washington, DC 20005

Re: Request for Records Pertaining to Mr. Gordon Hartogensis

Dear Mr. Evers:

I am responding to your Freedom of Information Act (FOIA) request submitted to the Disclosure Division of the Pension Benefit Guaranty Corporation (PBGC), dated July 31, 2019. You requested information pertaining to PBGC's Director, Gordon Hartogensis, for the time period of January 1, 2018, to the date the PBGC began conducting its search.¹ Specifically, you requested the following: 1) resume provided by Mr. Hartogensis to PBGC in connection with determining his appropriate salary, or, if that is not available, a recent resume contained within PBGC's records; 2) any conflicts or ethics waivers or authorizations for Mr. Hartogensis, including authorizations pursuant to 5 C.F.R. § 2635.502; 3) records reflecting any recusal determination made or issued for Mr. Hartogensis; and 4) any Standard Form 50 (SF-50) for Mr. Hartogensis reflecting any change in position or title, including when he enters or leaves a position.² I processed your requests³ in accordance with the FOIA and the PBGC's implementing regulation.

Pursuant to your request, we conducted a search of agency records. We did not locate any records responsive to Items 1, 3 and 4⁴ of your request. According to PBGC's Human Resources Department, hiring records, such as resumes, for political appointees are not maintained in any

¹ The temporal scope or "cut-off" date of a FOIA request is the date the record search begins. Courts have favored this definition because it "results in a much fuller search and disclosure" than the use of a less inclusive cut-off date, for example, one based on the date of request or of receipt by an agency. See *Pub. Citizen v. Dep't of State*, 276 F.3d 634, 644 (D.C. Cir. 2002). PBGC commenced its search for responsive documents on August 2, 2019.

² Your letter indicated that you had no objection to the redaction of home addresses, telephone numbers, or social security numbers from the SF-50s. You also requested a waiver of fees.

³ The PBGC granted your request for a waiver of fees on August 7, 2019.

⁴ Although the PBGC did not locate a SF-50 reflecting any change in Mr. Hartogensis's position or title, it is important to note that approved and executed SF-50s are not usually disclosable without consent from the subject of the record. Approved and executed SF-50s are contained in the Office of Personnel Management's (OPM) /Gov't-1, titled General Personnel Records. Gov't-1 is a system of records protected by the Privacy Act of 1974, as amended. In accordance with the Privacy Act, disclosure to a third party is only permitted upon receipt of written consent from the subject of the record stating that you are authorized to receive a copy of his record(s). Unfortunately, there is currently no Routine Use that would allow disclosure to you at this time and for your stated purpose. As such, in the absence of a signed authorization or a subpoena signed by a judge, from a court of competent jurisdiction, we would have been unable to disclose any SF-50 pertaining to this individual, even if a SF-50 was located and responsive to your request.

PBGC system of record. However, we located 9 pages responsive to Item 2, which may be disclosed to you, without consent, pursuant to U.S.C. § 552a(b)(3) (Routine Uses).⁵

Privacy Act Exception (b)(3), Routine Use #12, permits certain disclosures and use⁶ of records maintained in a system of records belonging to the Office of Government Ethics (OGE)/Gov't-1, titled Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records. This Routine Use allows disclosure of the below-described records "on the OGE Web site and to otherwise disclose to any person, including other departments and agencies, any written ethics agreements filed with the Office of Government Ethics, pursuant to 5 CFR 2634.803, by an individual nominated by the President to a position requiring Senate confirmation when the position also requires the individual to file a public financial disclosure report." As such, I am fully disclosing the following records:

- Ethics Agreement to PBGC, dated May 8, 2018 (3 pages);
- Ethics Agreement to PBGC, dated March 21, 2019 (3 pages); and
- Certification of Ethics Agreements, signed June 19, 2019 (3 pages).

Although this response is not a denial of records, I am providing you with your administrative appeal rights in the event you wish to avail yourself of this process. I am providing you your administrative appeal rights in the event you wish to avail yourself of this process. The FOIA provides at 5 U.S.C. § 552(a)(6)(A)(i) (2014) amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 that if a disclosure request is denied in whole or in part by the Disclosure Officer, the requester may file a written appeal within 90 days from the date of the denial or, if later (in the case of a partial denial), 90 days from the date the requester receives the disclosed material. The PBGC's FOIA regulation provides at 29 C.F.R. § 4901.15 (2017) that the appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Attention: Disclosure Division, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005. To expedite processing, the words "FOIA Appeal" should appear on the letter and prominently on the envelope.

In the alternative, you may contact the Disclosure Division's Public Liaison at (202) 326-4040 for further assistance and to discuss any aspect of your request. You also have the option to contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact

⁵ This information is publicly available at:

[https://extapps2.oge.gov/201/Presiden.nsf/032A1660B6238DE1852583CC0027E9B5/\\$FILE/Hartogenesis,%20Gordon%20A.%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/032A1660B6238DE1852583CC0027E9B5/$FILE/Hartogenesis,%20Gordon%20A.%20%20finalEA.pdf).


⁶ Public financial disclosure reports, such as those filed by Presidential appointees confirmed by the Senate, are released pursuant to the Ethics in Government Act. "Pursuant to section 105(c) of the Ethics in Government Act of 1978 and 5 C.F.R. § 2634.603(f) of the implementing OGE regulation, it is unlawful for any person to obtain or use a report: 1) for any unlawful purpose; 2) for any commercial purpose, other than by news and communications media for dissemination to the general public; 3) for determining or establishing the credit rating of any individual; or 4) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose. The U.S. Attorney General may bring a civil action against any person who obtains or uses a report for any such prohibited purpose as set forth above. The court may assess against such a person a penalty in any amount not to exceed \$19,246. Such remedy shall be in addition to any other remedy available under statutory or common law." Please contact OGE for more information about requesting copies of public financial disclosure reports and other related records under the Ethics in Government Act.

information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

This completes processing of your request. I have categorized your request as "Institutions/Media." Under this category, requests are subject to duplication costs. We have not assessed any duplication fees since the total cost is below PBGC's nominal threshold of \$25.00.

You may submit future requests for PBGC records by accessing FOIAonline, our electronic FOIA processing system, at <https://foiaonline.gov>. You may also submit requests by e-mail at Disclosure@pbgc.gov.

Sincerely,



D. Camilla Perry
Disclosure Officer
Office of the General Counsel
General Law and Operations Department

May 8, 2018

Philip R. Hertz
Designated Agency Ethics Official
Pension Benefit Guaranty Corporation
Office of the General Counsel
1200 K Street NW
Washington, DC 20005

Dear Mr. Hertz:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflicts of interest in the event that I am confirmed for the position of Director of the Pension Benefit Guaranty Corporation (PBGC).

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I will divest my interests in the entities listed in Attachment A within 90 days of my confirmation. With regard to each of these entities, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the entity until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I understand that I may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets.

I will retain my position as a trustee of the Hartogensis Family Trust. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of Director. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the Hartogensis Family Trust, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Upon confirmation, I will resign from my position with the Belle Haven Land Company Homeowners Association. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know the Belle Haven Land Company Homeowners Association is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

If I rely on a *de minimis* exemption under 5 C.F.R. § 2640.202 with regard to any of my financial interests in securities, I will monitor the value of those interests. If the aggregate value of interests affected by a particular matter increases and exceeds the *de minimis* threshold, I will not participate personally and substantially in the particular matter that to my knowledge has a direct and predictable effect on the interests, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Director in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink that reads "Gordon Hartogensis". The signature is written in a cursive, slightly slanted style.

Gordon A. Hartogensis

Attachment A

1. Adobe Systems Incorporated
2. Gannett Company Incorporated
3. General Dynamics
4. JP Morgan Chase & Company
5. Kroger Company
6. Microsoft Corporation
7. Mondelez International
8. State Street Corporation
9. SAP SE
10. TJX Companies Incorporated
11. Verizon
12. ALPHAKEYS BCP PE VII (Blackstone Global Private Equity Fund)

March 21, 2019

Philip R. Hertz
Designated Agency Ethics Official
Pension Benefit Guaranty Corporation
Office of the General Counsel
1200 K Street NW
Washington, DC 20005

Dear Mr. Hertz:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflicts of interest in the event that I am confirmed for the position of Director of the Pension Benefit Guaranty Corporation (PBGC).

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I will divest my interests in the entities listed in Attachment A within 90 days of my confirmation. With regard to each of these entities, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the entity until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I understand that I may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets.

I will retain my position as a trustee of the Hartogensis Family Trust. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of Director. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the Hartogensis Family Trust, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I previously held a position with the Belle Haven Land Company Homeowners Association which ended in June 2018. For a period of one year after the end of my service with

this entity, I will not participate personally and substantially in any particular matter involving specific parties in which I know the Belle Haven Land Company Homeowners Association is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

If I rely on a *de minimis* exemption under 5 C.F.R. § 2640.202 with regard to any of my financial interests in securities, I will monitor the value of those interests. If the aggregate value of interests affected by a particular matter increases and exceeds the *de minimis* threshold, I will not participate personally and substantially in the particular matter that to my knowledge has a direct and predictable effect on the interests, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

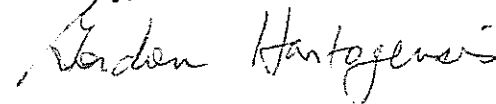
If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States, or municipal bonds.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Director in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink that reads "Gordon Hartogensis". The signature is written in a cursive, slightly slanted style.

Gordon A. Hartogensis

Attachment A

1. Adobe Systems Incorporated
2. Danaher Corporation
3. Gannett Company Incorporated
4. General Dynamics
5. JP Morgan Chase & Company
6. Kroger Company
7. Microsoft Corporation
8. Mondelez International
9. State Street Corporation
10. SAP SE
11. TJX Companies Incorporated
12. Verizon

CERTIFICATION OF ETHICS AGREEMENT COMPLIANCE Senate Confirmed Presidential Appointee		
1. Appointee's Information	a. Appointee's Name:	to be completed by OGE Gordon Hartogensis
	b. Position Title:	to be completed by OGE Director
	c. Agency:	to be completed by OGE Pension Benefit Guaranty Corporation
	d. Date Ethics Agreement Signed:	to be completed by OGE March 21, 2019
	e. Date Confirmed:	to be completed by OGE April 30, 2019
	f. Due Date for Certification of Ethics Agreement Compliance:	to be completed by OGE August 5, 2019
2. Resignations	<i>I completed all of the resignations indicated in my ethics agreement before I assumed the duties of my current government position.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
3. Divestitures	a. <i>I have completed all of the divestitures indicated in my ethics agreement. I also understand that I may not repurchase these assets during my appointment without OGE's prior approval.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
	b. <i>I have filed a period transaction report, or periodic transaction reports, (OGE Form 278-T) to disclose the completion of these agreed upon divestitures.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A Filing Date(s) of OGE Form 278-T Report(s): 6/15/2019
4. Managed Accounts	<i>If I have a managed account or use the services of an investment professional, I have notified the manager or professional of the limitations indicated in my ethics agreement. In addition, I am continuing to monitor purchases.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
5. Interim Recusals	<i>I complied with my interim recusal obligations pending the divestitures required by my ethics agreement.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

THIS CERTIFICATION WILL BE POSTED FOR PUBLIC VIEWING ON OGE'S WEBSITE. 1

<p>6.</p> <p>Recusals</p> <p>(Note: These factual statements describe the appointee's current status. They are not intended to modify ethics agreement commitments or create new recusal obligations.)</p>	<p>a. I am recusing from particular matters in which I know I have a <u>personal or imputed</u> financial interest directly and predictably affected by the matter, unless I have received a waiver or qualify for a regulatory exemption.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No</p>
	<p>b. I am recusing from particular matters in which any former employer or client I served in the past year is a party or represents a party, unless I have been authorized under 5 C.F.R. § 2635.502(d).</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
	<p>c. I am recusing from particular matters in which any former employer or client I served in the two years prior to my appointment is a party or represents a party, unless I have received a waiver under Exec. Order 13770.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>7.</p> <p>Waivers and Authorizations</p>	<p>a. I received a waiver pursuant to 18 U.S.C. § 208.</p> <p>If yes, indicate the date of the waiver and indicate the financial interest covered by the waiver.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date:</p> <p>Financial interest:</p>
	<p>b. I received a waiver pursuant to Executive Order 13770.</p> <p>If yes, indicate the date of the waiver and the subject of the waiver (i.e., applicable paragraph of the ethics pledge, parties, particular matters, specific issue areas, as applicable).</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date:</p> <p>Subject:</p>
	<p>c. I received an authorization pursuant to 5 C.F.R. § 2635.502(d).</p> <p>If yes, indicate date of authorization and identify the covered person(s) as to whom you have been authorized (e.g., former employer, former client, spouse's employer, spouse's current client, etc.).</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date:</p> <p>Covered person(s):</p>
	<p>d. I received a waiver pursuant to 5 C.F.R. § 2635.503(c).</p> <p>If yes, indicate the date of the waiver and identify the former employer or payer.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date:</p> <p>Former employer or payer:</p>

<p>8.</p> <p>Payments, Accelerations, or Divestitures Required to be Completed Prior to Entering Government Service</p>	<p>Mark this box if not applicable:</p> <div style="text-align: center;"> <input checked="" type="checkbox"/> </div>	<p>a. <i>If I committed that I would forfeit a financial interest or payment, unless it was received or accelerated prior to my assumption of the duties of the government position:</i></p>	<p><input type="radio"/> <i>I received it (or it was accelerated) <u>prior</u> to my assumption of the duties of the position.</i></p> <p><input type="radio"/> <i>I received it (or it was accelerated) <u>after</u> my assumption of the duties of the position.</i></p> <p><input type="radio"/> <i>I forfeited it.</i></p>
<p>9.</p> <p>Requirements for Regular Appointees</p>	<p><i>I have completed my initial ethics briefing, pursuant to 5 C.F.R. § 2638.305.</i></p> <p>If you are a Special Government Employee (SGE) or career Foreign Service Officer (FSO), select N/A.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>	
	<p><i>I have signed the ethics pledge pursuant to Executive Order 13770.</i></p> <p>If you are a SGE or career FSO or previously signed the pledge, select N/A.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>	
<p>10.</p> <p>Additional Ethics Agreement Requirements</p>	<p>to be completed by OGE</p>	<p>to be completed by appointee</p> <p><i>I am complying with these requirements as described in the adjacent box.</i></p> <p><input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A</p>	
<p>11.</p> <p>Comments of Appointee</p>			
<p>Any intentionally false or misleading statement or response provided in this certification is a violation of law punishable by a fine or imprisonment, or both, under 18 U.S.C. § 1001.</p>			
<p><i>I certify that the information I have provided is complete and accurate.</i></p>	<p>Appointee's Signature:</p> <p>GORDON HARTOGENSIS</p> <p>Digitally signed by GORDON HARTOGENSIS Date: 2019.06.19 11:02:12 -04'00'</p>		<p>Date:</p>